IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2846 OF 2005

Pune Cantonment Board & Anr. .. Petitioners

Versus

Latif Majjid Shaikh & Ors. .. Respondents

Mr.V.G.Muzumdar for petitioners

Mr.S.J.Rairkar for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th January 2006.

P.C.

. At the request of Mr.Mazumdar, respondent No.12 is deleted as he is expired.

2. Petitioner Cantonment Board challenges an order passed by the lower appellate court allowing the respondents' original plaintiffs' appeal being Misc.Civil Appeal No.28 of 2005 and granting temporary injunction against petitioner-defendant from obstructing respondents, while doing business of hawking on M.G. Road, till disposal of Regular Civil Suit No.1991 of 2004.

3. The submission of Mr.Mazumdar in support of this petition is that when the Board is discharging obligations virtually as planning authority in the area under its control and management as a Board statutorily constituted, it is obliged to provide facilities including maintaining roads etc. On a busy road viz., M.G.Road in the Cantonment area at Pune by virtue of the orders passed by the lower appellate court the respondents have been conferred with a right to hawk and keep their articles. Such a right could not have been conferred once it is a public

road and as held by the Supreme Court, such a right of respondents is subject to all reasonable restrictions including convenience of persons and residents using the road. That apart, he submits that during pendency of this petition, as per the statement made before the lower appellate court all respondents have been given premises at Abaji Maidan which is not very far away from the road in question. He points out that each one of them has been allotted with open spaces which are earmarked for their use and necessary documents including identity card have been issued.

4. Mr.Rairkar appearing for respondents was unable to controvert this submission because despite seeking time on earlier occasion, he submits that his clients have not given him any instructions.

5. In my view, order of the lower appellate court dated 17th February 2005 in the Misc.Civil

Appeal, prima facie, does not take into account the nature of the right which has been conferred upon respondents. It is not disputed that M.G.Road, Pune Camp area is busy road and if it is used by motorists through out the day then the footpath which is meant for use of pedestrians if occupied would pose several hazards and risks to the residents so also people using the road, otherwise. In these circumstances and in the light of the subsequent development, the temporary injunction granted in favour of the respondents deserves to be vacated.

6. In all fairness it must be observed that Mr.Rairkar being unable to take instructions and the documents placed on record not indicating, according to him, permanent arrangement or a temporary one, interest of justice would be subserved if the regular civil suit is kept pending and liberty is granted to the original plaintiffs to apply to trial court for

appropriate reliefs in case, they are aggrieved by any further steps that may be taken by Pune Cantonment Board. Leaving all such contentions open, present petition is allowed and temporary injunction granted stands vacated forthwith. Petition dismissed.

(S.C.DHARMADHIKARI, J)